IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

CHMABER SUMMONS NO.622 OF 2005
IN
SUIT NO.3290 OF 1992

Chagganlal Khimji and Co. Ltd. ..Plaintiffs.
Vs.
Kantilal &Co. and ors. ..Defendants.

Mr. Virag Tulzapurkar i/by Doijode Associates for the plaintiffs.

Zuber Kamdin i/by I.N. Kayser for the Defendants.

D.G.Dhurat, 1st Asstt. to Court Receiver present.

CORAM : A.M. KHANWILKAR, J.
DATED : 14/6/2005

P.C.:

1. Heard counsel for the parties.

2. In all three prayers are made in this chamber summons. This order will dispose of prayers (a) and (c) only. In so far as prayer clause (b) is concerned, I am inclined to take a view that the same tantamount to seeking review of the order passed by brother Justice D.Y.Chandrachud dated 16.12.2004 in Chamber Summons No.1566 of 2003. If the plaintiffs/applicants are so advised they may take recourse to remedy of review of the said order

before the same learned Judge.

3. The limited controversy in the prayer clause (a) of the chamber summons which needs to be referred to is that the plaintiffs claim to be the owners of the disputed property. During the pendency of the suit, Court receiver was appointed and the defendants were allowed to remain in possession of the premises as agents of the court receiver on payment of royalty specified by the court receiver. The order dated 16.2.1996, passed in Notice of Motion No.2501 of 1992 in Suit No.3292 of 1992, provides for the terms on which the court receiver was appointed and defendants were allowed to remain in possession. The said order also provides for recovery of amount from the defendants towards the royalty. It also provides that royalty so collected from the defendants shall be made over to the plaintiffs every month. That order has been acted upon by the parties. It however, appears that the defendants committed default in payment of royalty amount, for which reason court receiver has taken over the possession of the disputed premises from the defendants and instead has put the plaintiffs in possession thereof as agents of the court receiver. However, condition of payment of royalty is not

given effect as against the plaintiffs as they claim to be the owners thereof. It is seen that now an amount towards the arrears of royalty has been recovered from the defendants, being Rs.39,17,500/-. The said amount has been deposited by the defendants with the Prothonotary & Sr. Master, High Court, Bombay. In all probability said amount has been invested by the office of the Prothonotary. In this back drop, the plaintiffs pray that they be permitted to withdraw the said amount of Rs.39,17,500/- lying with the Prothonotary and Sr. Master alongwith accrued interest thereon if any.

4. This prayer is resisted by the defendants. However, I see no substance in the objection raised by the advocate for the defendants. In the past, pursuant to the order dated 16.2.1996 royalty amount was paid to the plaintiffs. In pursuance of the said order, the plaintiffs were entitled for the amount of royalty which was to be recovered by the court receiver from the defendants. The amount in question is towards arrears of royalty, to be paid by the defendants. The order dated 16.2.1996 has not been challenged so far and it has become final. Accordingly, the plaintiffs are entitled for relief in terms of prayer clause (a). It is however, made

clear that all amounts already withdrawn by the plaintiffs deposited by the defendants from time to time towards the royalty is without prejudice to the rights and contentions of the defendants so as to request the court at the end of the trial to adjust equities in the event the defendants were to succeed in their stand taken in the present proceeding.

5. In so far as prayer clause (c) is concerned Mr.Tulzapurkar fairly accepts that similar prayer was made in Notice of Motion No.1253 of 2003 and the same has been rejected by Justice D.G. Karnik. I see no reason to differ with the view already expressed by Justice D.G. Karnik to decline the prayer for expeditious hearing of the suit. Accordingly, Chamber summons in terms of prayer clause (c) will have to be rejected.

6. As mentioned earlier, I am not expressing any opinion with regard to relief claimed in terms of prayer clause (b) and it will be open to the plaintiffs to take recourse of remedy as permissible by law. All question in that behalf are kept open. Accordingly, this chamber summons is disposed in the following terms.

7. Prayer clause(a) is made absolute. Prayer (c) is rejected. No orders on prayer (b).

8. However, it is made clear that the amount towards the expenses incurred by the office of the court receiver whether to be deducted from the subject amount, that issue will be decided by the court receiver after giving opportunity to both the parties. According to the representative of the court receiver amount of Rs.2,35,050/- will have to be deducted as expenses incurred by the office of the court receiver. Retaining that amount, balance amount be made over the plaintiff.

(A.M. KHANWILKAR,J.)